REMARKS

The Applicant is responding herein to an Office Action mailed on March 24, 2005. At the time of the Office Action, claims 1-9 and 11-23 were pending. In the present response, claims 1, 9, 19, 13 and 21-23 have been amended. No claims have been canceled or added. Accordingly, claims 1-9 and 11-23 are currently pending.

In the Office Action, the Examiner rejected claims 1-2, 4, 8, 9, 11-14 and 17-20 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,790,895 to Krontz et al. ("Krontz"). Claims 3, 5, 15 and 21-23 were rejected under 35 U.S.C. § 103(a) as being rendered obvious by Krontz in view of U.S. Patent Publication 20020032785 to Britt Jr. et al. ("Britt"). Claims 6, 7 and 16 were rejected under 35 U.S.C. § 103(a) as being rendered obvious by Krontz in view of U.S. Patent No. 6,671,343 B1 to Tsugio Ito ("Ito"). These rejections are addressed in detail below.

Rejections under 35 U.S.C. § 102(b)

The Examiner rejected claims 1-2, 4, 8, 9-14 and 17-20 under 35 U.S.C. § 102(b) as being anticipated by Krontz. The following rejections made by the Examiner of claim 1 is exemplary:

> As per claim 1, Krontz teaches a remote server management controller comprising:
> -an external communication interface (Fig. 1A element 149) adapted to communicate according to a first communication protocol and to receive from a remote user (column 12 lines 17-36, lines –54-64).
>
> The reference teaches the modem (external communication interface) receives the incoming call and examines the first few characters from the incoming call

(receiving data) from the remote user using certain communication protocols (first communication protocol.
     -an input/output processor (IOP) adapted to:
     -receive data from external communication interface (column 10 lines 46-64); and

The reference teaches the input/output processor (IOP) receives data from the modem (external communication interface).
     -transmit data corresponding to the data received from the external communication interface to an operating system (OS) of a managed server (column 10 lines 55-67) (column 11 lines 1-9, lines 26-45) (column 12 lines 54-64); and

The reference teaches sending the resource data to the operating system of the server and the Virtual communication port of the device intercepts the data. The data is sent to the remote computer (remote user) via the modem (external communication port) to the operating system.
     -a virtual communication device (VCD) (Fig. 2 element 200) interface adapted to (column 11 lines 40-44):
     -intercept data received from the OS, the data being in a format that is not compatible with first communication protocol (column 10 lines 55-67)(column 11 lines 1-9, lines 26-45)(column 12 lines 76-36) (column 12 lines 54-67), the data not being addressed to the external communication interface (column 12 lines 54-67).

The reference teaches intercepting the data, which is not in the format of certain protocols (first communication protocols), it gobbles or disposes the data therefore it is not addressed to external communication interface.
     -format the data for transmission according to the first communication protocol (column 12 lines 54-63); and

The reference teaches remote computer senses that connection in regards to data has not been established and retransmits and redirects it again through the protocols (format the data according to first communication protocol) therefore gobbling of data changed therefore the data has been transmitted.
     -to redirect the formatted data to the external communication interface instead of a specific communication interface to which the data was addressed (column 12 lines 54-67).

9

The reference teaches retransmitting the redirected formatted data to the operating system from the remote computer through a modem (external communication interface).

Office Action, pp. 2-4.

The Applicant respectfully traverses the rejection. Anticipation under Section 102 can be found only if a single reference shows exactly what is claimed. *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 U.S.P.Q. 773 (Fed. Cir. 1985). For a prior art reference to anticipate under Section 102, every element of the claimed invention must be identically shown in a single reference. *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). To maintain a proper rejection under Section 102, a single reference must teach each and every element or step of the rejected claim. *Atlas Powder v. E.I. du Pont*, 750 F.2d 1569 (Fed. Cir. 1984). Thus, if the claims recite even one element not found in the cited reference, the reference does not anticipate the claimed invention.

The rejection of independent claims 1, 9 and 13 under Section 102 is improper because the prior art reference that is used to reject claims 1, 9 and 13 does not disclose each and every element recited by those claims. For example, independent claim 1 recites a virtual communication device (VCD) interface adapted to intercept data received from an operating system (OS) and "to redirect *without arbitration* the data received from the OS to the remote user." (Emphasis added). Similarly, independent claims 9 and 13 recite a VCD adapted to "redirect *without arbitration* the formatted data to the external communication interface." (Emphasis added).

10

In contrast to the claimed subject matter, Krontz discloses "an apparatus which shares a resource ... between [computer applications] ...." Krontz, col. 2, lines 43-45. Enabling sharing a resource, such as a modem, Krontz further discloses an arbitrator 220 which supervises the sharing of the modem so that "applications executing in the operating system mode is prevented from interfering with the remote console's exclusive use of the modem." Krontz, col. 10, lines 34-44. As further disclosed by Krontz "the SMI handler for the virtual communication port 200 acts as an arbitrator to decide when access to the virtual communication port 200 should be forwarded to the UART device 145." Krontz, col. 10, lines 51-54; *See* also Fig. 2. That is, before data can be redirected to the external communication interface 145 from the virtual communication port 200 the arbitrator 220 decides on allocating these devices among various computer applications requesting access to these resources. Further, a series of conditions provided by the arbitrator 220 may determine when the external communication interface 145 may access the virtual communication port 200. Krontz, col. 11, lines 52-65.

Because the technique disclosed by the Krontz reference is aimed at sharing a resource among multiple computer applications, employing an arbitrator for allocating access to the virtual communication port 200 and forwarding such an access to the external communication port 145 is necessary. In other words, without employing such arbitration means, the system disclosed by Krontz would not be functional. Therefore, Krontz cannot anticipate the claimed redirection of data "*without arbitration...* from the OS to the remote user," as recited by independent claim 1. Nor can Krontz anticipate the claimed VCD adapted to "redirect *without arbitration* the formatted data to the external communication interface," as recited by independent claims 9 and 13.

For at least these reasons, it is clear that Krontz does not contain each and every element set forth in independent claims 1, 9, and 13, or the claims dependent thereon. Krontz therefore fails to anticipate independent claims 1, 9, and 13, as well as the claims dependent thereon. Accordingly, the Applicant requests withdrawal of the rejection under Section 102 and allowance of the rejected claims.

Claims 8, 12 and 17

Dependent claims 8 and 12 recite a remote server management controller "wherein the external communication interface is an Ethernet interface." Similarly, claim 17 recites a method for remotely retrieving data comprising the act of enabling an Ethernet interface to receive the request for OS information." In rejecting the claims, the Examiner pointed to a number of instances where the Krontz reference discloses an Ethernet interface, such as the Ethernet interface disclosed by the claims. Office Action, pages 4, 6 and 7. The disclosures pointed out by the Examiner pertain to certain hardware devices, such as a modem and bus drivers, however, they do not teach an Ethernet interface. The Applicant requests the Examiner to further point out where such disclosures are made and how they pertain to the claimed remote server management controller having an external interface "wherein the external communication interface is an Ethernet interface," as recited by the claims. Absent any such disclosure, the rejection claims 8, 12 and 17 cannot stand.

Claim 18

Dependent claim 18 recites a method comprising "the act of initiating an out-of-band management communication session." In rejecting the claim, the Examiner pointed to the

12

disclosure made by the Krontz references as teaching the claimed subjected matter. Office

Action, page 8. However, the Applicant submits that no such disclosures appear to be

included in the Krotnz reference referring to an out-of-band management communication

sessions. The disclosures pointed out by the Examiner pertain to the sharing of a resource

among multiple computer applications, employing an arbitrator for allocating access to a

virtual communication port. Again, the Applicant is requesting the Examiner to further

clarify as to where the disclosure made by the Krontz reference pertains to the subject matter

recited by claim 18. Absent any such disclosure, the rejection of claim 18 is improper.

Rejections under 35 U.S.C. § 103(a)

The Examiner rejected claims 3, 5, 15 and 21-23 under 35 U.S.C. § 103(a) as being

rendered obvious by Krontz in view of Britt. Claims 6, 7 and 16 were rejected under 35

U.S.C. § 103(a) as being rendered obvious by Krontz in view of Ito. The Applicant

respectfully traverses the rejections.

The burden of establishing a *prima facie* case of obviousness falls on the Examiner.

Ex parte Wolters and Kuypers, 214 U.S.P.Q. 735 (B.P.A.I. 1979). Obviousness cannot be

established by combining the teachings of the prior art to produce the claimed invention

absent some teaching or suggestion supporting the combination. *ACS Hospital Systems, Inc.*

v. Montefiore Hospital, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984).

Accordingly, to establish a *prima facie* case, the Examiner must not only show that the

combination includes *all* of the claimed elements, but also a convincing line of reason as to

why one of ordinary skill in the art would have found the claimed invention to have been

obvious in light of the teachings of the references. *Ex parte Clapp*, 227 U.S.P.Q. 972

(B.P.A.I. 1985). When prior art references require a selected combination to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gained from the invention itself, i.e., something in the prior art as a whole must suggest the desirability, and thus the obviousness, of making the combination. *Uniroyal Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 U.S.P.Q.2d 1434 (Fed. Cir. 1988).

Claims 3, 5, 15 and 21-23

Claims 3, 5 and 21 depend from independent claim 1. Claim 22 depends from independent claim 9. Claims 15 and 23 depend from independent claim 13. The Applicant respectfully submits that claims 3, 5, 15 and 21-23 are allowable based on these dependencies, because Britt does not cure the deficiencies regarding Krontz, which are described above. Specifically, Britt does not disclose a VCD that includes the limitations discussed above with respect to the rejection of independent claims 1, 9 and 13 under Section 102. For at least these reasons, claims 3, 5, 15 and 21-23 are believed to be allowable over the cited references taken alone or in combination with each other. Thus, the Applicant respectfully requests withdrawal of the rejection of claims 3, 5, 15 and 21-23.

Claims 6, 7 and 16

Claims 6 and 7 depend from independent claim 1, and claim 16 depends from independent claim 13. The Applicant respectfully submits that claims 6, 7 and 16 are allowable based on these dependencies, because Ito does not cure the deficiencies regarding Krontz, which are described above. Specifically, Ito does not disclose a VCD that includes the limitations discussed above with respect to the rejection of independent claims 1, 9 and 13 under Section 102. For at least these reasons, claims 6, 7 and 16 are believed to be allowable
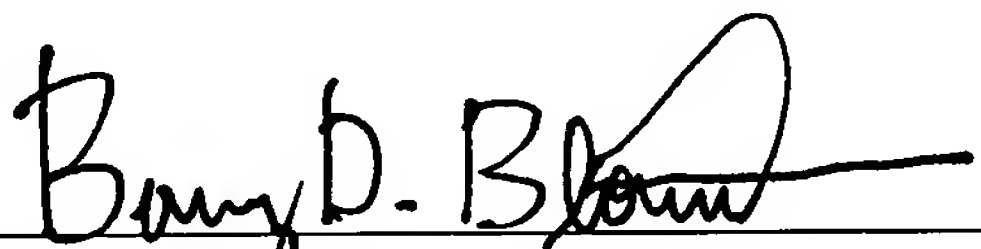
over the cited references taken alone or in combination with each other. Thus, the Applicant respectfully requests withdrawal of the rejection of claims 6, 7 and 16.

Conclusion

In view of the remarks set forth above, the Applicant respectfully requests reconsideration of the Examiner's rejections and allowance of all pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

Date: June 9, 2006

Barry D. Blount
Reg. No. 35,069
(281) 970-4545

CORRESPONDENCE ADDRESS:
Intellectual Property Administration
Legal Department, M/S 35
HEWLETT-PACKARD COMPANY
P.O. Box 272400
Fort Collins, CO 80527-2400

15